IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY APPLICATION NO.869 OF 2006
IN
COMPANY PETITION NO.790 OF 2005

SICOM Limited ..Applicant.

Vs.

The Official Liquidator,
High Court, Bombay being the
Liquidator of Libra Polymers
Private Limited (in liqn.) & Ors. ..Respondents.

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Mr. M.P. Rege for the Applicant.
Ms. K.V. Gautam, Dy. Official Liquidator present.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

8th June, 2007.

P.C. :

1. The Applicant SICOM Limited claims that it is a secured creditor of the company in liquidation, Libra Polymers Private Limited. The Applicant has also stated before the Court that the Second and Third Respondents respectively, Maharashtra State Financial Corporation and Bank of Maharashtra are also secured creditors. The Applicant had extended financial facilities to the company in liquidation in 1989 and 1990 to the extent of Rs.94 lacs. The amount

having fallen overdue a notice under Section 29 of the State Financial Corporations Act, 1951 was issued on 30th July, 2004 upon which possession was taken by the Applicant of a plot of land bearing Plot No. N-69, in the Tarapur Industrial Area of MIDC together with the building, plant and machinery on 20th August, 2004. The Applicant claims that there is a deed of mortgage dated 11th December, 1989 and an indenture of second mortgage dated 30th March, 1990. The Applicant has in the affidavit in support of the Company Application stated that advertisements were issued on three occasions for the sale of the properties of the company in liquidation and eventually in the third auction held on 23rd December, 2005 the highest bid in the amount of Rs.85 lacs was received. The highest offer was between the fair market value and disposable value of the assets mentioned in a valuation report dated 1st September, 2005 obtained by the Applicant. The assets were sold on 7th February, 2006 by the acceptance of the bid of the highest bidder. The Applicant has received the entire sale consideration and placed the purchaser in possession.

2. On 29th September, 2005 an order of winding up was passed by this Court in Company Petition 790 of 2005. The Applicant has moved the Court for a direction in terms of Section 536(2) of the Companies Act, 1956 for ratifying the sale which was conducted after the order of winding up was passed. The submission of the Applicant is that it was unaware of the order of winding up. The Applicant has submitted that the sale was conducted bona fide after conducting a valuation and inviting bids by the publication of advertisements in the newspapers on three separate occasions. It has been urged that it was only on the third occasion, when the highest bid that was received in the amount of Rs.85 lacs was found to be fair and reasonable that the bid was accepted in the interest of the secured creditors.

3. Section 536(2) of the Companies Act, 1956 provides that in the case of winding up by the Court, any disposition of the property of the company, made after the commencement of the winding up, shall unless the Court otherwise orders, be void. In the present case, in paragraph 4 of the affidavit in support the Applicant has adverted to

the manner in which the sale was carried out. The contents of the affidavit abundantly demonstrate that the Applicant had appointed a valuer from its panel and a valuation report was duly obtained. The first advertisement for sale was released in September, 2004 and an auction sale was conducted on 6th October, 2004 for which only one valid offer for plant and machinery was received. The offer was below the distress value and was rejected. The property was again readvertised in September 2005 but no favourable response was received. Finally on 9th December, 2005 a fresh sale was advertised in Maharashtra Times and in the Business Standard. At the third occasion on 23rd December, 2005 the highest offer in the amount of Rs.85 lacs which was received was between the fair market value and the disposable value. The Applicant has stated that the building, plant and machinery was almost 15 years old and there was a deterioration in the quality of the machinery and the building. The statutory liabilities at that stage were Rs.4.53 lacs in September, 2005. The purchaser has undertaken to pay the statutory liability. These facts would demonstrate that the sale has been conducted by the Applicant in the exercise of its powers under the State Financial

Corporations Act, 1951 bona fide and after following requisite procedure that would ensure that the proper price was received. Though the Official Liquidator stated before the Court that the Applicant had appeared before the B. I. F. R. that by itself is not an indicator of the fact that the Applicant was aware of the final order of winding up passed by this Court. In these circumstances there is no reason why the sale as conducted should not be ratified.

4. The second aspect of the Company Application is that the Applicant seeks appropriation and distribution of the net sale proceeds as between itself and the second and Third Respondents who are secured creditors. On the previous date of hearing the Applicant had sought an adjournment to place on the record an affidavit setting out the principal amount outstanding to the three financial institutions (the Applicant, the Second and Third Respondents respectively) and the manner of apportionment. Accordingly an affidavit has been filed in which it has been stated that the Applicant has in its possession, after adjusting the sale expenses and taking into account the interest accrued on the amount of Rs.85

lacs net sale proceeds in the amount of Rs.87.66 lacs. The share of the Applicant and the Second and Third Respondents has been worked out at 43.59%, 19.05% and 37.36%. Consequently out of the amount of Rs.87.66 lacs, the Applicant would be entitled to retain an amount of Rs.38.21 lacs while the Second and Third Respondents would respectively be entitled to Rs.16.70 lacs and Rs.13.75 lacs respectively. The Applicant has undertaken before this Court that it would bring back any amount found due and payable to the workers upon adjudication under Section 529-A as well as to any other statutory creditors as may be found due and payable by this Court together with such interest as may be awarded. The Liquidator has stated before the Court that it would be necessary for the Applicant and the Second and Third Respondents respectively to file on affidavit the necessary documentation in proof of their respective claims. This suggestion of the Liquidator has not been opposed by counsel appearing for the Applicant. Counsel appearing for the Applicant has stated before the Court that the Second and Third Respondents have also been served with these proceedings and the three financial institutions have together agreed to the disbursal of the amount to the

Applicant and the Second and Third Respondents subject to the furnishing of an undertaking as may be directed. Hence, the following order :

i) The Applicant, the Second and Third Respondents shall within a period of four weeks from today file before the Official Liquidator on affidavit proof of their respective debts together with necessary documentation as would enable the Official Liquidator to adjudicate upon the claims. The affidavit shall be filed before the Official Liquidator no later than 6th July, 2007. The Official Liquidator shall carry out the process of adjudication in respect of the claims of the Applicant and the Second and Third Respondents as secured creditors on or before 3rd August, 2007 after convening a meeting of the authorized representatives for the aforesaid purpose in the office of the Official Liquidator with prior notice to the concerned parties;

ii) Subject to the Applicant filing an undertaking before this Court that the Applicant would bring back pro rata such amount as may be found due and payable to the workers under Section 529-A

and to the other secured creditors, with such rate of interest as may be awarded by this Court on a report of the Official Liquidator at the appropriate stage, the Applicant is permitted to retain out of the net sale proceeds the amount as found due upon adjudication by the Official Liquidator;

iii) Similarly, insofar as the Second and Third Respondents are concerned, the Second and Third Respondents shall respectively file similar undertakings in the terms directed in Clause (ii) herein above before this Court with a copy to the Official Liquidator. Subject to the verification of the claims of the Second and Third Respondents and subject to the Liquidator verifying that an undertaking has been filed by the Second and Third Respondents before this Court as directed, the Liquidator shall issue directions to the Applicant to disburse the pro rata share of the Second and Third Respondents to the respective Respondents. In the event that the Second and Third Respondents fail to file their undertakings within four weeks of the date of the order of the Liquidator determining their pro rata entitlement if any, the Applicant shall disburse the requisite amount to the Official Liquidator

which amount shall thereupon be invested by the Official Liquidator in an appropriate Fixed Deposit of a nationalized bank pending the determination of the claims;

iv) The Applicant shall within a period of two weeks from today deposit with the Official Liquidator an amount of Rs.1 lac to cover the costs and expenses of the Liquidator of inviting claims from the workers and other third parties. Upon the Liquidator completing the process of adjudication in respect of the claims of the workers under Section 529-A and all the other statutory creditors as well as of all the other creditors, the Liquidator shall be at liberty to file a report before this Court seeking appropriate directions including directions, if necessary in regard to the disbursal of the amount pro rata by the Applicant to the Second and Third Respondents.

The Company Application is accordingly made absolute in terms of prayer clause (a). Insofar as prayer clause (b) is concerned, the Applicant and the Official Liquidator and the Second and Third Respondents shall abide by the directions already issued in the earlier part of this order.